

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 JEREMY P. MONAHAN and CANDY
12 D. MONAHAN, as Husband and Wife as
Joint Tenants,

13 Plaintiff,
vs.

15 DECISION ONE MORTGAGE
16 COMPANY, a Business Entity, form
17 unknown; STEWART TITLE OF
18 CALIFORNIA, a Business Entity, form
unknown; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
Business Entity, for unknown, and DOES
1-20 inclusive.

19 Defendants.

CASE NO. 10-CV-2078-H (RBB)

**ORDER GRANTING
DEFENDANT STEWART
TITLE OF CALIFORNIA'S
MOTION TO DISMISS**

20 On October 6, 2010, Plaintiffs Jeremy P. Monahan and Candy D. Monahan brought this
21 action against Defendants Decision One Mortgage, Stewart Title of California (“Stewart
22 Title”), and Mortgage Electronic Registration Systems, Inc. (Doc. No. 1.) On December 16,
23 2010, Defendant Stewart Title filed its motion to dismiss the complaint for failure to state a
24 claim. (Doc. No. 15.) On January 21, 2011, the Court submitted the motion on the papers.
25 (Doc. No. 18.) To this date, Plaintiffs have not yet filed an opposition. After due
26 consideration, the Court GRANTS Defendant Stewart Title’s motion to dismiss.

BACKGROUND

28 Plaintiffs own real property located at 10535 Dabney Drive, San Diego, CA 92126 (the

1 “Property”). (Compl. ¶ 2.) Plaintiffs entered into a loan repayment and security agreement
 2 on or about September 18, 2006 with Defendant Decision One Mortgage Company (“Decision
 3 One”). (Id. ¶ 3.) Under this agreement, Plaintiffs were to repay a loan of \$600,000 to Decision
 4 One.¹ (Id. ¶ 20.) The note was secured by a First Trust Deed on the Property. (Id.) Plaintiffs
 5 allege that Stewart Title is the original escrow/title company for the loan. (Id. ¶ 6.)

6 Plaintiffs allege that Defendants failed to perform the proper due diligence when
 7 qualifying them for the loan. (Compl. ¶ 22.) First, Plaintiffs allege that Defendants did not
 8 make the terms of the loan, such as the high income to liability ratio, clear and conspicuous.
 9 (Id. ¶ 23.) Furthermore, Plaintiffs allege that Defendants qualified them for a loan based on
 10 their credit scores and stated income, and failed to use more accurate documentation such as
 11 tax forms. (Id. ¶ 25.) Plaintiffs allege that Defendants sold them a deceptive loan product
 12 which they knew Plaintiffs would be unable to fully pay back. (Id.) Plaintiffs further allege
 13 that Defendants committed various violations during the handling and processing of their loan.
 14 (Id. ¶¶ 30-38.)

15 These violations form the basis for Plaintiffs’ causes of action for: (1) declaratory
 16 relief; (2) injunctive relief; (3) claim to determine the validity of a lien under Cal. Comm. Code
 17 § 9313; (4) contractual breach of implied covenant of good faith and fair dealing; (5) violation
 18 of TILA, 15 U.S.C. § 1601, et seq.; (6) violation of RESPA, 12 U.S.C. § 2601, et seq.; (7)
 19 violation of Cal. Civ. Code § 2932.5; (8) rescission; (9) fraud; (10) unfair and deceptive
 20 business act practices; (11) breach of fiduciary duty; (12) unconscionability; (13) violation of
 21 Cal. Bus. & Prof. Code § 17200; and (14) quiet title. (Compl.)

22 DISCUSSION

23 I. Motion to Dismiss Pursuant to 12(b)(6)

24 A motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) tests
 25 the legal sufficiency of the claims asserted in the complaint. Navarro v. Black, 250 F.3d 729,
 26 732 (9th Cir. 2001). Federal Rule of Civil Procedure 8(a)(2) requires that a pleading stating
 27

28 ¹The Court notes that Plaintiffs also allege in a separate paragraph of the complaint that
 the amount owed is \$80,000. (See Compl. ¶ 3.)

1 a claim for relief contain “a short and plain statement of the claim showing that the pleader is
 2 entitled to relief.” The function of this pleading requirement is to “give the defendant fair
 3 notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic Corp. v.
 4 Twombly, 550 U.S. 544, 555 (2007). “While a complaint attacked by a Rule 12(b)(6) motion
 5 to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the
 6 ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a
 7 formulaic recitation of the elements of a cause of action will not do.” Id. A complaint does
 8 not “suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’”
 9 Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 557). “Factual
 10 allegations must be enough to raise a right to relief above the speculative level.” Twombly,
 11 550 U.S. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp.
 12 235–36 (3d ed. 2004)). “All allegations of material fact are taken as true and construed in the
 13 light most favorable to plaintiff. However, conclusory allegations of law and unwarranted
 14 inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” Epstein
 15 v. Wash. Energy Co., 83 F.3d 1136, 1140 (9th Cir. 1996); see also Twombly, 550 U.S. at 555.

16 **II. Federal Claims**

17 **A. Violations of TILA**

18 Plaintiffs allege that Defendants violated the federal Truth in Lending Act, 15 U.S.C.
 19 § 1601, et seq. (“TILA”). (Compl. ¶¶ 61-72.) Plaintiffs allege Defendants failed to provide
 20 Plaintiffs with “accurate material disclosures required under TILA.” (Id. ¶ 63.) Plaintiffs
 21 allege that the original mortgage lender failed to provide Plaintiffs with a correct payment
 22 schedule and accurate interest rate. (Id. ¶ 65.) Plaintiffs further allege that they are entitled
 23 to damages, restitution and disgorgement of profits. (Id. ¶¶ 70-71.) Plaintiffs also seek to
 24 rescind the loan. (Id. ¶¶ 90-94.)

25 TILA seeks to protect credit consumers by mandating “meaningful disclosure of credit
 26 terms.” 15 U.S.C. §1601(a). A request for any damages under TILA is subject to a one year
 27 statute of limitations, typically running from the date of the occurrence of the violation. 15
 28 U.S.C. §1640(e). The doctrine of equitable tolling extends the statutory period only where,

1 “despite all due diligence, a plaintiff is unable to obtain vital information bearing on the
 2 existence of his claim.” Santa Maria v. Pac. Bell, 202 F.3d 1170, 1178 (9th Cir.2000).
 3 Equitable tolling “focuses on whether there was excusable delay by the plaintiff,” and “does
 4 not depend on any wrongful conduct by the defendant to prevent the plaintiff from suing.” Id.
 5 The Ninth Circuit has held equitable tolling of civil damages claims brought under TILA may
 6 be appropriate “in certain circumstances,” such as when a borrower might not have had a
 7 reasonable opportunity to discover the nondisclosures at the time of loan consummation. King
 8 v. State of California, 784 F.2d 910, 915 (9th Cir. 1986). Courts then have discretion to
 9 “adjust the limitations period accordingly.” Id.

10 Plaintiffs obtained their loan on September 18, 2006, but did not file this action until
 11 more than four years later, on October 6, 2010. Because Plaintiffs brought their TILA
 12 damages claim more than one year after the date of the occurrence of the alleged violation, the
 13 claim is time-barred. The Court concludes that Plaintiffs have not alleged sufficient facts to
 14 suggest that the claim is timely or that equitable tolling is appropriate. Plaintiffs’ complaint
 15 fails to show that they were denied any “vital information bearing on the existence” of their
 16 TILA claim. See Santa Maria, 202 F.3d at 1178. Additionally, Plaintiffs do not offer any
 17 allegations indicating that they acted with “due diligence” or with “excusable delay” in
 18 bringing this action four years after the loan transaction. Id.; see also O’Connor v. Boeing N
 19 Am., Inc., 311 F.3d 1139, 1157-58 (9th Cir. 2002) (a plaintiff relying on delayed discovery or
 20 fraudulent concealment to toll limitations period must plead when and how she discovered her
 21 claim so the court can judge whether information triggering her filing had been available
 22 earlier).

23 To the extent Plaintiffs seek rescission under TILA, their claim is also time-barred. The
 24 remedy of rescission is available for three years under TILA, 15 U.S.C. § 1635(f), but only
 25 where a borrower is willing and able to tender the balance owed. See Yamamoto v. Bank of
 26 N.Y., 329 F.3d 1167, 1173 (9th Cir. 2003); LaGrone v. Johnson, 534 F.2d 1360, 1392 (9th Cir.
 27 1974). Once the three-year time limit elapses, the borrower’s rescission right is “completely
 28 extinguishe[d].” Beach v. Ocwen Fed. Bank, 523 U.S. 410, 412 (1998). Additionally, the

1 Ninth Circuit has held that a court should order the borrower to demonstrate an ability to tender
 2 as a prerequisite to considering the merits of the borrower's TILA claim. Yamamoto, 329 F.3d
 3 at 1171. Plaintiffs filed this claim four years after the closing date on the mortgage. Moreover,
 4 Plaintiffs have not alleged that they tendered, or are willing to tender, the owed amount under
 5 the loan. Furthermore, this cause of action does not appear to allege any wrongful actions by
 6 Stewart Title directly and instead only alleges violations by the mortgage lender. (See Compl.
 7 ¶¶ 65, 67-68.) Accordingly, the Court GRANTS Defendant Stewart Title's motion to dismiss
 8 Plaintiffs' TILA claim.

9 **B. Violations of RESPA**

10 Plaintiffs allege that Defendants violated the federal Real Estate Settlement and
 11 Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 et seq. (Compl. ¶¶ 73-81.) Plaintiffs allege
 12 that the lender and broker failed to properly disclose the yield spread premium, and that
 13 payments to the broker and the lender were designed to create a windfall. (*Id.* ¶¶ 76-80.)
 14 Plaintiffs' allegations of improper fees appear to fall under section 2607 of RESPA, entitled
 15 "Prohibition against kickbacks and unearned fees," which provides:

16 No person shall give and no person shall accept any portion, split, or percentage
 17 of any charge made or received for the rendering of a real estate settlement
 18 service in connection with a transaction involving a federally related mortgage
 19 loan other than for services actually performed.

20 12 U.S.C. § 2607(b).

21 Private actions under section 2607 must be brought within one year of the violation.
 22 12 U.S.C. § 2614. Plaintiffs' allegations refer to conduct that allegedly took place during the
 23 origination of the loan in 2006. (Compl. ¶ 3.) The equitable tolling analysis above also applies
 24 to Plaintiffs' RESPA claim. Because Plaintiffs failed to bring this cause of action within one
 25 year after securing the loan in question, Plaintiffs' cause of action for violation of section 2607
 26 is time-barred. Furthermore, this cause of action does not appear to allege any wrongful
 27 actions by Stewart Title directly and instead only alleges violations by the mortgage broker and
 28 lender. (See Compl. ¶ 79.) Accordingly, the Court GRANTS Defendant Stewart Title's
 motion to dismiss Plaintiffs' RESPA claim.

1 **III. Declaratory Relief**

2 Plaintiffs also seek declaratory relief under the Declaratory Judgment Act, 28 U.S.C.
 3 § 2201. (Compl. ¶¶ 15, 39-43.). “[T]he Declaratory Judgment Act is not a jurisdictional
 4 statute. It does not create subject matter jurisdiction where none otherwise exists. It only
 5 creates a particular kind of remedy available in actions where the district court already has
 6 jurisdiction to entertain a suit.” Jarrett v. Resor, 426 F.2d 213, 216 (9th Cir. 1970).
 7 Declaratory judgment is a remedy committed to judicial discretion. Pub. Serv. Comm'n of
 8 Utah v. Wycoff Co., Inc., 344 U.S. 237, 241 (1952) (Declaratory Judgment Act “is an enabling
 9 Act, which confers discretion on the courts rather than an absolute right upon the litigant.”);
 10 see also Zemel v. Rusk, 381 U.S. 1, 19 (1965); A.L. Mechling Barge Lines, Inc. v. United
 11 States, 368 U.S. 324, 331 (1961). Here, Plaintiffs advance no claims over which the Court has
 12 subject matter jurisdiction, and the Declaratory Judgment Act provides no independent basis
 13 for district court jurisdiction of Plaintiffs’ claims. Accordingly, the Court declines to consider
 14 the declaratory judgment claim.

15 **IV. Remaining State Law Claims**

16 In addition to the federal claims under TILA and RESPA, Plaintiffs pled the following
 17 state law claims: claim to determine the validity of a lien under Cal. Comm. Code § 9313,
 18 contractual breach of implied covenant of good faith and fair dealing, violation of Cal. Civ.
 19 Code § 2932.5, rescission, fraud, unfair and deceptive business act practices, breach of
 20 fiduciary duty, unconscionability, violation of Cal. Bus. & Prof. Code § 17200, quiet title, and
 21 injunctive relief. The case was filed in federal court on the basis of federal question
 22 jurisdiction pursuant to 28 U.S.C. § 1331 based on the TILA and RESPA claims. (Compl. ¶
 23 13.) The state law claims are before this court under supplemental jurisdiction pursuant to 28
 24 U.S.C. § 1367. (Id. ¶ 14.)

25 A district court may decline to exercise supplemental jurisdiction over a claim under
 26 28 U.S.C. § 1367(c)(3) if “the district court has dismissed all claims over which it has original
 27 jurisdiction.” 28 U.S.C. § 1367(c)(3). “In the usual case in which all federal-law claims are
 28 eliminated before trial, the balance of factors to be considered under the pendent jurisdiction

1 doctrine—judicial economy, convenience, fairness, and comity—will point toward declining
2 to exercise jurisdiction over the remaining state-law claims.” Carnegie-Mellon University v.
3 Cohill, 484 U.S. 343, 350 n.7 (1988). Because the Court has dismissed the federal causes of
4 action giving rise to this Court’s original jurisdiction, the Court declines to exercise
5 supplemental jurisdiction over the remaining state law claims. Accordingly, the Court
6 GRANTS Defendant Stewart Title’s motion to dismiss the state law claims.

7 **CONCLUSION**

8 After due consideration, the Court grants Defendant Stewart Title’s motion to dismiss
9 the complaint.

10 **IT IS SO ORDERED.**

11 DATED: January 28, 2011


12 MARILYN L. HUFF, District Judge
13 UNITED STATES DISTRICT COURT
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28